
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SALVADOR SANDOVAL-OCHOA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
APPOINT COUNSEL AND GRANTING
LEAVE TO FILE AMENDED § 2255
MOTION, AND NOTICE**

Civil No. 2:16-CV-1052-DN
(Crim. No. 2:15-CR-91-DN)

District Judge David Nuffer

Petitioner Salvador Sandoval-Ochoa requests the appointment of counsel in this case brought under [28 U.S.C. § 2255](#).¹ There is no constitutional or statutory right to the appointment of counsel in § 2255 proceedings, unless an evidentiary hearing is held.² Nevertheless, counsel may be appointed when “the interests of justice so require” for a “financially eligible person” seeking relief under § 2255.³

After review and consideration of Mr. Sandoval-Ochoa’s filings, justice does not require the appointment of counsel at this time. It is yet unclear that Mr. Sandoval-Ochoa has asserted any colorable basis for relief from his sentence. Mr. Sandoval-Ochoa, through his filing,⁴ has also shown an “ability to investigate the facts necessary for [the] issues and to articulate them in

¹ Petitioner’s Motion Seeking Appointment of Counsel, Pursuant to Title 18 U.S.C. § 3006A, and Petitioner Preserves the Johnson Case for Future Litigation 135 S.Ct. 2551 (2015), [docket no. 1](#), filed June 27, 2016.

² *Paul v. United States*, 2006 WL 314563, *1 (D. Utah Feb. 9, 2006); Rules Governing Section 2255 Proceedings for the United States District Courts 8(c).

³ [18 U.S.C. 3006A\(a\)\(2\)\(B\)](#).

⁴ Petitioner’s Motion Seeking Appointment of Counsel, Pursuant to Title 18 U.S.C. § 3006A, and Petitioner Preserves the Johnson Case for Future Litigation 135 S.Ct. 2551 (2015), [docket no. 1](#), filed June 27, 2016.

a meaningful fashion.”⁵ Additionally, the issues Mr. Sandoval-Ochoa raises appear to be “straightforward and not so complex as to require counsel’s assistance.”⁶ Therefore, Mr. Sandoval-Ochoa’s request for the appointment of counsel⁷ is DENIED. However, if it later appears that counsel may be needed or of specific help, an attorney will be appointed to appear on Mr. Sandoval-Ochoa’s behalf.

Mr. Sandoval-Ochoa also requests leave to file an amended § 2255 motion⁸ raising a claim for relief based on the United States Supreme Court’s opinion in *Johnson v. United States*.⁹ Given that Mr. Sandoval-Ochoa’s filing¹⁰ does not comply with the pleading requirements for a § 2255 motion,¹¹ it is appropriate that his request for leave to file an amended § 2255 motion¹² be GRANTED.

ORDER

IT IS HEREBY ORDERED that Mr. Sandoval-Ochoa’s request for the appointment of counsel¹³ is DENIED. However, if it later appears that counsel may be needed or of specific help, an attorney will be appointed to appear on Mr. Sandoval-Ochoa’s behalf.

⁵ *United States v. Lewis*, 1998 WL 1054227, *3 (D. Kan. Dec. 9, 1998); *Oliver v. United States*, 961 F.2d 1339, 1343 (7th Cir. 1992).

⁶ *Lewis*, 1998 WL 1054227, *3; *Oliver*, 961 F.2d at 1343.

⁷ Petitioner’s Motion Seeking Appointment of Counsel, Pursuant to Title 18 U.S.C. § 3006A, and Petitioner Preserves the Johnson Case for Future Litigation 135 S.Ct. 2551 (2015), [docket no. 1](#), filed June 27, 2016.

⁸ *Id.*

⁹ 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015).

¹⁰ Petitioner’s Motion Seeking Appointment of Counsel, Pursuant to Title 18 U.S.C. § 3006A, and Petitioner Preserves the Johnson Case for Future Litigation 135 S.Ct. 2551 (2015), [docket no. 1](#), filed June 27, 2016.

¹¹ Rules Governing Section 2255 Proceedings for the United States District Courts 2, 3.

¹² Petitioner’s Motion Seeking Appointment of Counsel, Pursuant to Title 18 U.S.C. § 3006A, and Petitioner Preserves the Johnson Case for Future Litigation 135 S.Ct. 2551 (2015), [docket no. 1](#), filed June 27, 2016.

¹³ *Id.*

IT IS FURTHER HEREBY ORDERED that Mr. Sandoval-Ochoa's request for leave to file an amended § 2255 motion¹⁴ raising a claim for relief based on the United States Supreme Court's opinion in *Johnson*¹⁵ is GRANTED. Mr. Sandoval-Ochoa must file his amended § 2255 motion by no later than May 12, 2017.

NOTICE

NOTICE IS HEREBY GIVEN that on March 6, 2017, the United States Supreme Court issued its decision in *Beckles v. United States*.¹⁶ In *Beckles*,¹⁷ the Supreme Court addressed whether the analysis of *Johnson*¹⁸ and *Welch v. United States*¹⁹ apply to render the residual clause of USSG § 4B1.2(a), defining "crime of violence," unconstitutionally vague. The Supreme Court concluded that it did not, holding that "the advisory Guidelines are not subject to a vagueness challenge under the Due Process Clause and that [USSG] § 4B1.2(a)'s residual clause is not void for vagueness."²⁰

Mr. Sandoval-Ochoa is encouraged to review the *Beckles*²¹ decision and determine its applicability to the claim for relief he intends to include in his amended § 2255 motion. If, after reviewing the *Beckles*²² decision, Mr. Sandoval-Ochoa believes his intended claim is without merit, he may file a notice of voluntarily dismissal of this case. Otherwise, he may proceed with the filing of his amended § 2255 motion. However, Mr. Sandoval-Ochoa is cautioned that if he

¹⁴ *Id.*

¹⁵ [135 S.Ct. 2551, 192 L.Ed.2d 569 \(2015\)](#).

¹⁶ [137 S.Ct. 886 \(2017\)](#).

¹⁷ *Id.*

¹⁸ [135 S.Ct. 2551](#).

¹⁹ [136 S.Ct. 1257](#).

²⁰ [137 S.Ct. at 895](#).

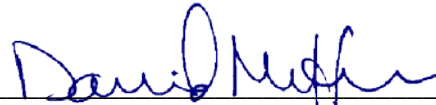
²¹ *Id.*

²² *Id.*

files the amended § 2255 motion, and it is dismissed on its merits, any “second or successive [§ 2255] motion must be certified as provided in [28 U.S.C. §] 2244 by a panel of the appropriate court of appeals to contain--(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.”²³

Signed April 13, 2017.

BY THE COURT



District Judge David Nuffer

²³ 28 U.S.C. § 2255(h); *see also* Rules Governing Section 2255 Proceedings for the United States District Courts 9.